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80-5303

NO. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

ANTONIA BELTRAN
~~ROSSIE DAWSON~~, individually and on behalf of all others similarly situated,

Petitioner,

v.

BEVERLEE A. MYERS, individually and in her official capacity as Director of the California State Department of Health; and ELISABETH LYMAN, individually and in her official capacity as Deputy Director of the State Department of Health,

Respondents.

BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether California's transfer of assets rule which denies benefits to any individual who has transferred assets so as to qualify for medical assistance (Medi-Cal) conflicts with the federal Medicaid statutes and regulations?

2. Whether California's transfer of assets rule which denies benefits to any individual who has transferred assets so as to qualify for medical assistance (Medi-Cal) violates the due process and equal protection clauses of the Fourteenth Amendment?

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LIST OF PARTIES

Respondents: Beverlee A. Myers, Director of the Department of Health Services erroneously identified as its predecessor, the Department of Health,

Elisabeth Lyman, Deputy Director of the Department of Health Services erroneously identified as its predecessor, the Department of Health.

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STATEMENT OF THE CASE

1. California has voluntarily chosen to participate in the Medicaid program. (42 U.S. C. § 1396 et seq.) A requirement of such participation is the adoption of a state plan for medical assistance which conforms to federal guidelines. After the Secretary of the Department of Health and Human Services (HHS) approves the individual state plan, the state is eligible to receive federal financial assistance for its program. California's state plan for medical assistance (the Medi-Cal program) was approved by HHS and California is presently receiving federal financial participation.

One federal requirement for a state which operates a Medicaid program is that it must provide coverage to a group of persons known as the "categorically needy" - those individuals who receive financial assistance under Title IV-A or Title XVI of the Social Security Act. (42 U.S.C. § 1396a(a)(10)(A).) States also have the option of covering a group known as the "medically needy" - those individuals who would qualify for Title IV-A or Title XVI financial assistance except that they have sufficient income and resources to cover their essentials apart from medical expenses. The chief distinction between the two groups is that the categorically needy have lower incomes and less resources than the medically needy.

2. California's transfer of assets rule (Cal. Welf. & Inst. Code § 14015; Petitioners' App.D, at 35) and the regulations implemented thereunder (22 Cal. Admin. Code §§ 50408, 50409; Petitioners' App. D, at 35) apply only to the medically needy group. The rule creates a rebuttable presumption that any transfer of assets for less than adequate consideration within two years prior to applying for assistance was made with the intent to qualify for medical assistance. The applicant has the opportunity to rebut the presumption by providing evidence "that adequate resources were available at the time of the transfer of property

for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources." (22 Cal. Admin. Code § 50409; Petitioners' App. D, at 35.) The failure to rebut the presumption will result in the ineligibility for Medi-Cal for a specified period of time.

3. Rossye Dawson, on behalf of herself and others similarly situated instituted this action on June 19, 1978 by filing a complaint for declaratory and injunctive relief in the district court for the Central District of California. The gravamen of the complaint was that California's transfer of assets rule contradicted applicable portions of the Social Security Act and thus violated the Supremacy Clause. The rule also allegedly violated the equal protection and due process clauses of the Fourteenth Amendment. Plaintiff Dawson has since died.

Two other individuals, Beltran and Manahan, intervened seeking the same relief. Both plaintiffs transferred all or part of their interest in their homes to relatives. Both plaintiffs were denied Medi-Cal benefits based on the fact that they had transferred assets for less than adequate consideration prior to applying for Medi-Cal. And none of the plaintiffs were able to overcome the presumption that they had transferred their assets with the intent to qualify for assistance.[1/]

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1. With respect to Beltran, the county computed her period of ineligibility to be 885 months. As a practical matter, Beltran would not be ineligible for 885 months because the ineligibility period would be substantially reduced by deducting the amount of medical expenses incurred in the convalescent center. (Title 22, Cal. Admin. Code §§ 50411 and 50605.)

The district court certified a class consisting of all those who had been denied Medi-Cal benefits because of California's transfer of assets rule. Plaintiff Manahan died while the case was before the Court of Appeals.

4. On May 10, 1979, the district court granted California's motion for summary judgment and denied plaintiff's cross motion for summary judgment. (Petitioners' App. B, at 22.) The court found that California's transfer of assets rule did not conflict with the Supremacy Clause nor constitute a denial of equal protection or due process. (Petitioners' App. B, at 24.)

5. On May 11, 1979, plaintiffs appealed to the Court of Appeals for the Ninth Circuit. Plaintiffs also sought injunctive relief for the class and certain individuals while the appeal was pending. Plaintiffs argued that unless injunctive relief were granted there would be mass eviction of class members from nursing homes. Whereas the Court granted injunctive relief for individual members, relief was denied for the class. In a decision dated May 14, 1980, a three-judge panel of the Court of Appeals for the Ninth Circuit affirmed the judgment of the district court for the Central District. The decision upheld California's transfer of assets rule and rejected all of plaintiffs' arguments. (Petitioners' App. A at 1.) In upholding California's transfer rule, the court was not unmindful of the fact that the majority of the courts which had been faced with similar challenges reached the opposite conclusion. (Petitioners' App. A, at 16.) The panel, in affirming the district court below, upheld a state rule designed solely to protect the fiscal integrity of California's Medi-Cal program and to reserve the state's limited financial resources for those truly in need of medical assistance.

6. Plaintiffs filed petitions for rehearing and rehearing en banc. On July 21, 1980, the Secretary of HHS made a motion for permission to file an amicus curiae brief. On July 30, 1980, a three-judge panel voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc. The full court was advised of the suggestion for en banc rehearing and no judge of the court requested a vote on the suggestion. In addition, the motion of the Secretary of HHS for permission to file an amicus curiae brief was denied. (Petitioners' App. C, at 33.) The plaintiffs then filed the within petition for writ of certiorari.

ARGUMENT

Petitioners attempt to characterize the decision of the Court of Appeals for the Ninth Circuit as in direct contradiction to every other court which has considered the validity of a transfer of assets rule. Respondents would simply submit the two lower courts--the district court below and the district court in Maryland (Fabula v. Solomon (1978) 463 F.Supp. 830)--have agreed with the position of respondents and the decision of the panel. In the state courts, although the Appellate Division of the New York Supreme Court has struck down the New York transfer of assets rule (Scarpuzza v. Blum--A.D.2d--- synopsis at CCH Medicare & Medicaid Guide, ¶ 30,404), the Supreme Court of Wisconsin has upheld Wisconsin's transfer of assets rule. (Lerner v. Division of Family Services (1975) 70 Wis.2d 670, 235 N.W.2d 478.) The panel was certainly not unmindful of the fact that other courts have reached the opposite conclusion. The panel is not, however, as much of a maverick as the petitioners would like to believe.

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Respondents, in opposing the issuance of the writ, are not unaware of the fact that other federal courts of appeals have rendered decisions in conflict with the panel's decision. However, inasmuch as petitioners have also addressed the merits in their petition, the respondents feel compelled to briefly discuss some of the substantive issues raised by petitioners in order to afford the court a clearer picture of the matter under review.

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CALIFORNIA'S TRANSFER OF ASSETS RULE DOES NOT VIOLATE THE SUPREMACY CLAUSE AS IT DOES NOT CONFLICT WITH ANY FEDERAL STATUTE OR REGULATION

Persons who comprise the class which includes the named plaintiffs have all been found to have transferred their assets for less than adequate consideration "with the intent to qualify for assistance" (Cal. Welf. & Inst. Code § 14015). All of them were found to have had sufficient assets to support their present medical needs. The purpose in implementing the transfer of assets rule is not so much to penalize these individuals. It is rather to preserve state funds for those persons who are truly in need of government-funded medical care. The United States Supreme Court recognized this when it said that restrictions on welfare eligibility attempt "to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments. . . ." (New York Dept. of Social Services v. Dublino (1973) 413 U.S. 405, 413.) The Medi-Cal system could not long survive the drain on its funds if individuals in the state who transferred assets for inadequate consideration with the intent to qualify for assistance were eligible for medical assistance. And, certainly, the "self-reliance" and "civic responsibility" about which the Supreme Court spoke would not be promoted by such attempts to qualify for assistance at the expense of the public treasury.

These policy considerations would carry little weight in the face of explicit federal statutes or regulations prohibiting the state's imposition of a transfer of assets rule.

However, no such statutes or regulations exist. Nowhere in either Title XIX of the Social Security Act or the regulations promulgated thereunder is there any mention of a prohibition against transfer of assets rules. In fact, the only logical reading of those statutes and regulations is that a state may impose different income and resource eligibility criteria on the optional medically needy group than are imposed on the categorically needy.

Petitioners argue that California's transfer of assets rule violates the Supremacy Clause in that it conflicts with portions of the Social Security Act and applicable regulations. Specifically, petitioners allege that the rule conflicts with 42 United States Code section 1396a(a)(10)(C) and 42 United States Code section 1396a(a)(17)(B) because it imposes an additional requirement on the medically needy which is not imposed on the categorically needy. The Court of Appeals found no conflict with any of these sections. (Petitioners' App. A, at 10, 11, 12.) Respondents submit that the Court reached the correct decision based upon the language of those sections and applicable case law.

Medicaid has been described as an experiment in cooperative federalism with boundless options. (Michael Reese Physicians and Surgeons, S.C. v. Quern (7th Cir. 1979) 606 F.2d 732, 735.) The United States Supreme Court has recognized that states face the "critical problem of mounting welfare costs and the increasing financial dependency of many of its citizens." The severity of these problems requires that states be given "considerable latitude in attempting their resolution." (New York Dept. of Social Services v. Dublino, supra.)

The starting point in any analysis involving the Supremacy Clause is the basic principle that the courts will not assume that a federal statute was intended to supersede the

exercise of a valid state power unless clearly and unambiguously stated. In Dublino, supra, the Supreme Court held:

> "This Court has repeatedly refused to void statutory programs, absent congressional intent to pre-empt them.
>
> > 'If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.' Schwartz v. Texas, 344 U.S. 199, 202-203 (1952)." (405 U.S. 413.)

The principle becomes even more applicable under the Medicaid program as Congress has expressly required state Medicaid programs to adopt certain procedures to curb abuses and has not prevented state welfare departments from instituting other reforms that would fall within their discretion in administering these programs. (Michael Reese Physicians and Surgeons, S.C. v. Quern, supra.)

Neither the statutes nor the regulation upon which petitioners rely specifically prohibit the state's imposition of a transfer of assets rule. Petitioners can point to no provision in the Social Security Act which mandates that states may only use eligibility requirements explicitly authorized by federal statute. Petitioners can likewise find no requirement that the eligibility rules for the optional medically needy group must be identical to those applied to the categorically needy.

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California's transfer rule does not conflict with 42 United States Code section 1396a(a)(10)(C). (Petitioners' App. D, at 34.) The plain meaning of this section is that a state must make medical assistance available to the medically needy to the same extent as the categorically needy, except for income and resource requirements. As the panel correctly held, the transfer of assets rule is clearly an income and resource eligibility criterion. Petitioners misconstrue the law when they argue that federal law requires that no more restrictive eligibility conditions be employed against the medically needy than against the categorically needy. Section 1396a(a)(10)(C) excludes income and resource criteria from these requirements. If the exact same eligibility conditions were employed for the two groups, there would be no difference between them. The transfer of assets rule is a financial eligibility condition which directly affects an individual's income and resource levels. Section 1396a(a)(10)(C) specifically permits such differentiation between the two groups of covered individuals.

The second part of section 1396a(a)(10)(C) requires that a state plan must make medical assistance available to individuals "who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services. . . ." (Petitioners' App. D, at 34.) Congress has given some guidance on which beneficiaries shall have their eligibility determined by "comparable" standards. The legislative history of Title XIX is clear that by "comparable standards" of income and resources, Congress intended to require comparability as among the different groups of medically needy, rather than comparability between the categorically needy and the medically needy. (S.Rpt. 404, 89th Cong., 1st Sess., 1965 U.S. Code Cong. & Admin. News at p. 2017.)

"Under the bill, if a State extends the program to those persons not receiving assistance under titles I, IV, X, XIV, and XVI, the determination of financial eligibility must be on a basis that is comparable as among the people who, except for their income and resources, would be recipients of money for maintenance under the other public assistance programs. Thus, the income and resources limitation for the aged must be comparable to that set for the disabled and blind and must also have a comparability for that set for families with children, who except for their income and resources, would be eligible for AFDC. The scope, amount, and duration of medical assistance available to each of these groups must be equal." (Emphases added.)

Congress, therefore, required that, among the medically needy, the aged, the blind and the disabled must have their eligibility determined by comparable income and resource limitations. It did not require comparability as between the categorically needy and the medically needy.

Even if the second part of section 1396a(a)(10)(C) is read as requiring comparability between the categorically needy and the medically needy, the Ninth Circuit found:

"The other standards which are used for determining financial eligibility are similar enough to invite comparison. We therefore cannot say that the standards used by California to determine eligibility into the medically needy group (including the transfer rule) are not comparable to those which are used under the SSI program." (Petitioners App. A, at 8.)

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Petitioners base their argument on letters written by Regional Administrators of HHS stating that state transfer rules are inconsistent with section 1396a(a)(10)(C) because they impose more restrictive requirements on the medically needy than on the categorically needy. As the panel noted, however, an agency's interpretation of its regulations is not entitled to complete deference. As the Court of Appeals for the Ninth Circuit held in a recent case dealing with the HHS's interpretation of certain Medicare regulations:

> "The deference which a reviewing court is to afford to an agency's interpretation of its regulations is not total, however. Congress has vested in the court a reviewing function over the action of the agency, including its interpretative decisions. 42 U.S.C. § 1395oo(f), 5 U.S.C. §§ 701-706. We would be abdicating our judicial responsibility if we were to pass on the propriety of the Secretary's interpretation without subjecting it to some degree of scrutiny. As where courts review an agency's construction of a statute which the agency administers, 'the deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia . . . .' American Ship Building Co. v. NLRB, 380 U.S. 300, 318 (1965); Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission, 390 U.S. 261 (1968). Even though the Medicare reimbursement area is complex, and to a great degree left to the Secretary to structure, his interpretations are nonetheless subject to our examination." [Footnotes omitted.] (Pacific Coast Medical Enterprises v. Harris (9th Cir. March 28, 1980) ___F.2d___, slip op. 2516, 2525-2526.)

In another Ninth Circuit case, the court held that the congressional policy underlying a statute as well as other compelling policy considerations are of equal if not greater importance.

> "However, the courts do not merely 'stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.' NLRB v. Brown, 380 U.S. 278, 291, 85 S.Ct. 980, 988, 13 L.Ed.2d 839 (1965), quoted in Volkswagenwerk v. FMC, 390 U.S. 261, 272, 88 S.Ct. 929, 935, 19 L.Ed.2d 1090 (1968). Nor will the courts 'defer to an administrative construction where there are compelling indications that it is wrong.' Marathon Oil Co. v. Kleppe, 556 F.2d 982, 986 (10th Cir. 1977.)" (Baker v. United States (9th Cir. 1980) 613 F.2d 224, 227.)

In the case at bar, Congress has given the states wide latitude in the administration of their Medicaid programs. Further in 1972, Congress repealed section 1396b(e) of Title 42, a statute which required a state to make efforts in the direction of broadening the scope of care and services and in the direction of liberalizing the eligibility requirements for medical assistance. (Pub.L. 92-603, Title II, § 230, 86 Stat. 1410.) By repealing this statute, Congress recognized its awareness of the fiscal crises confronting states in the administration of their Medicaid programs. The effect of upholding the interpretation taken by HHS's regional administrators would be to make Medi-Cal available to any aged, blind or disabled person, or any AFDC family regardless of whether that individual or family had insufficient income and resources for medical needs. Such a result flies directly in

the face of the Congressional intent of alleviating the fiscal burdens of state Medicaid programs.

Furthermore, HHS's opinion of the transfer of assets rule is far from consistent. HHS has approved California's state plan in spite of the fact that the transfer rule (Cal. Welf. & Inst. Code § 14015) has been in effect since 1965. The Seventh Circuit found this a very persuasive factor in determining whether statutory and regulatory requirements had been violated. In Michael Reese Physicians and Surgeons, S.C. v. Quern, supra, (7th Cir. 1979) 606 F.2d 732, the court was faced with a challenge to an Illinois regulation which allegedly violate a federal Medicaid statute. In upholding the regulation, the court said:

> "In passing the Medicare and Medicaid Antifraud and Abuse Amendments, Congress required state programs to adopt certain procedures to curb abuses. Congress did not prevent state welfare departments from instituting other reforms which would fall within their discretion in administering the Medicaid programs. Medicaid is an experiment in cooperative federalism, [citations omitted], which literally abounds with options, [citations omitted]. Medicaid is designed to be flexible enough to meet the varying needs of each state which elects to participate in the program. By approving the Illinois Medicaid plan, and by declining thus far to take any action against the modification in the plan, the Department of Health, Education and Welfare has in effect expressed its view that the plan is in compliance with applicable statutory and regulatory requirements." (Emphasis added.) (606 F.2d at pp. 735-736.)

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The Ninth Circuit's decision to accord little weight to the interpretations of HHS is consistent with the district court decision of Robinson v. Pratt, No. 79-1278-S (D.Mass., June 24, 1980). This court determined that no private right of action exists under section 1396a(a)(10)(C), and that the requirements of this section are merely conditions of federal participation in the Medicaid program. The court stated:

> "It is equally clear that compliance with 42 U.S.C. § 1396a(a)(10)(C) is not mandated as a rule of law to be enforced by the courts, but is mandated only as a condition of federal participation in a Medicaid program.
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> "The enforcement of this statute has not been committed to the courts to be executed through private right of action. Such judicial enforcement would interfere with the discretion expressly vested in the Secretary. I perceive her invitation to the court to intervene as a total distortion of the statutory scheme and as an attempt to avoid a thorny political decision, i.e., an abdication of responsibility." (Robinson v. Pratt, supra, at p. 9.)

II

THE CALIFORNIA TRANSFER OF ASSETS RULE DOES NOT VIOLATE THE FEDERAL REQUIREMENT THAT ONLY AVAILABLE INCOME AND RESOURCES BE CONSIDERED IN DETERMINING ELIGIBILITY

Petitioners contend that California's transfer of assets rule is violative of 42 United States Code section 1396a(a)(17)(B) in that only actually available income and resources may be considered in eligibility determinations under the Medicaid program. (Petitioners' App. D, at 34.) This argument is not supported, however, by case authority interpreting this very provision.

A —

In Lerner v. Division of Family Services (Wis. 1975) 235 N.W.2d 478, the Supreme Court of Wisconsin held that the Wisconsin transfer of assets rule did not violate Title 42 of the United States Code section 1396a(a)(17(B). The Wisconsin statute was very similar to California's. The court noted that Wisconsin's transfer rule -

> ". . . merely requires the petitioner to demonstrate that the lack of presently available resources is not the result of a divestment of property for the purpose of qualifying for benefits. Thus, the statutory provision is not in conflict with the federal statute and regulations, but is merely a procedure for determining what assets are, in fact, available to meet present needs or, but for divestment, would have been available. Petitioner is not precluded from making a showing that the specific divestment was not made in contemplation of benefits or without receiving full and adequate consideration. Any interpretation which finds conflict between the federal statute and the state provision would seem to allow for extensive abuse of the medical assistance program, since a failure to require the showing mandated by sec. 49.47(4)(d), Stats., could result in any and every person who meets the income eligibility requirements automatically becoming eligible for benefits by the simple expedient of giving away or signing over control of all measurable assets. Such a result could not have been contemplated by the legislature when it enacted Title XIX, nor by HEW when it promulgated regulations thereunder." (Lerner, supra, at pp. 483-484.)

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The cases cited by petitioners in support of their assertion that California's regulation violates Title 42 United States Code section 1396a(a)(17)(B) are inapposite. In Buckner v. Maher (D.Conn. 1976) 424 F.Supp. 366, aff'd. (1977) 98 S.Ct. 290, Udina v. Walsh (E.D.Mo. 1977) 440 F.Supp. 1151, the courts were dealing with statutes which disqualified applicants solely because of a transfer of assets. The statutes did not require that a finding be made that the applicant transferred such property with the intent to qualify for assistance. Unlike these statutes, California requires such a finding to be made. Thus, it does not violate due process.

Therefore, California's rule does not violate the federal requirement that only available resources shall be considered. Without a transfer rule any person could qualify for medical assistance by merely divesting themselves of sufficient assets. This would quickly bankrupt a state's medical assistance program and would result in the denial of all benefits to those truly in need. This could not have been the intent of the federal government when it enacted the Medicaid program.

III

CALIFORNIA'S TRANSFER OF ASSETS RULE DOES NOT VIOLATE THE DUE PROCESS OR EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT

Petitioners argue that California's transfer of assets rule creates an irrebuttable presumption in violation of the due process clause. By its terms, the rule is rebuttable. The applicant has the opportunity to rebut the presumption by providing evidence "that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age,

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health, life expectancy and ability to understand extent of resources." (22 Cal. Admin. Code § 50409.) (Petitioners' App. D, at 35.)

Finally, petitioners argue that because the transfer rule only applies to medically needy, it violates the equal protection clause. This rule does not violate equal protection because it is rational for California to scrutinize transfer of assets by the medically needy to assure that financial eligibility is not manufactured and that medical assistance benefits are dispersed only to those truly in need. California's transfer rule, as the panel noted, is "rationally related to the legitimate government objectives of protecting the public treasury and discouraging intentional impoverishment so as to qualify under a public assistance program." (Petitioners' App. A, at 15.)

CONCLUSION

Based on the foregoing, a writ of certiorari should not issue to review the decision of the Ninth Circuit.

DATED: September 23, 1980.

Respectfully submitted,

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ROSSYE DAWSON, et al.,

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v.

BEVERLEE A. MYERS, et al.,

Respondents.

CERTIFICATE OF SERVICE
(Rule 28.5)

I, Anne S. Pressman, a member of the bar of the Supreme Court, do hereby certify that, pursuant to Rule 28.5 of the Rules of this Court, I have served on this 24th day of September, 1980, three copies of the Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed to:

Gill Deford, Esq.
Neal S. Dudovitz, Esq.
National Senior Citizens Law Center
1636 West 8th St., Suite 201
Los Angeles, California 90017

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Stuart Parker, Esq.
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Legal Aid Society of Orange County
2700 North Main Street, 11th Floor
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I further certify that all parties required to be served have been served.

ANNE S. PRESSMAN
Counsel for Respondents